

STATE OF MICHIGAN  
COURT OF APPEALS

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KEVIN LeBLANC and KRISTEN LeBLANC,

Plaintiffs-Appellants,

v

FRANKLIN PROUSE MOTORS LIMITED,

Defendant-Appellee.

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UNPUBLISHED

May 28, 1999

No. 211727

Chippewa Circuit Court

LC No. 97-003242 NI

Before: Whitbeck, P.J., and Markman and O'Connell, JJ.

PER CURIAM.

Plaintiffs appeal as of right an order granting summary disposition for defendant. This suit arises out of a tragic automobile accident in which plaintiff Kevin LeBlanc was injured while aiding the driver of a disabled vehicle leased by defendant to the driver, Cherylene Luxton. Plaintiffs brought suit against defendant under Michigan's Civil Liability Act, MCL 257.401 *et seq.*; MSA 9.101 *et seq.*, which the trial court concluded did not apply since defendant was not an "owner" of the vehicle within the meaning of the act. We affirm.

Defendant is a Canadian corporation that has been engaged in the business of selling and leasing automobiles to the general public since it began business in 1986. On December 22, 1992, defendant leased a 1992 GMC pickup truck to Cherylene Luxton. The lease provided that Luxton was to lease the vehicle for a term of forty-eight months at a monthly payment of \$362.25. The lease further set forth several circumstances under which defendant could declare the lease in default and several circumstances under which Luxton could terminate the lease. The lease also required the lessee to obtain and provide evidence of \$2 million in public liability and property damage insurance on the vehicle. Luxton actually obtained \$1 million of third-party liability insurance on the vehicle. However, attached to the lease was a "Lessee's Insurance Undertaking" that provided for only \$1 million of third-party liability insurance on the vehicle. The lease provided: "This Lease constitutes the entire agreement between Lessor and Lessee and confirms that there are no other representations, agreements or understandings affecting it; that any further schedule, agreement, understanding or waiver to be binding on the parties hereto, must be reduced to writing and attached hereto . . . ."

Plaintiffs first argue that summary disposition was improperly granted before the close of discovery. However, resolution of this suit turned on whether defendant was an “owner” of the vehicle, a question of law. Because the lease was attached to the complaint and its terms alone governed this dispositive legal issue, further discovery could not have resulted in additional factual support for plaintiffs’ claim. The motion for summary disposition was therefore properly entertained before the close of discovery. See *Mackey v Corrections Dep’t*, 205 Mich App 330, 333-34; 517 NW2d 303 (1994).

Plaintiffs also argue that summary disposition was improper because the trial court considered documents that were not filed and served at least twenty-one days before the hearing on the motion, as required by MCR 2.116(G)(1)(a)(i). Plaintiffs are apparently referring to defendant’s supplemental brief in support of its motion for summary disposition and an attached transcript of the hearing on plaintiffs’ motion to amend the complaint in a related action. However, the substance of these documents went only to defendant’s argument that sanctions against plaintiffs were appropriate for bringing a frivolous suit. The trial court declined to sanction plaintiffs and there was no indication that the trial court relied on the supplemental brief and attached transcript in granting summary disposition for defendant. Accordingly, no prejudice to plaintiffs resulted from this late filing and any error was harmless. See *Baker v DEC Int’l*, 218 Mich App 248, 262; 553 NW2d 667 (1996), rev’d in part on other grounds 458 Mich 247; 580 NW2d 894 (1998), citing *Hubka v Pennfield Twp*, 197 Mich App 117, 119-20; 494 NW2d 800 (1992), rev’d on other grds 443 Mich 864 (1993); MCR 2.613.

Plaintiffs next question the trial court’s determination, in support of the grant of summary disposition, that defendant was not an “owner” of the leased vehicle under the Civil Liability Act. A motion for summary disposition may be granted pursuant to MCR 2.116(C)(10) when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Featherly v Teledyne Industries, Inc*, 194 Mich App 352, 357; 486 NW2d 361 (1992). A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. On appeal, an order granting summary disposition is reviewed de novo. The record must be reviewed to determine whether the successful party was entitled to judgment as a matter of law. *Adkins v Thomas Solvent Co*, 440 Mich 293, 302; 487 NW2d 715 (1992).

In *Ball v Chrysler Corp*, 225 Mich App 284, 289; 570 NW2d 481 (1997), the plaintiff argued that the defendant was not exempted by the lessor provisions of the act, MCL 257.401a and 401(2); MSA 9.2101(1) and 2101(2),<sup>1</sup> because “the agreement between [the defendant lessor] and [the driver-lessee] was terminable at will and thus not ‘for a period that is greater than thirty days’ as required by § 401(2) and § 401a . . . [given that defendant] retained the right to unilaterally amend the terms of the lease program at any time and to offer replacement or substitute vehicles at its discretion.” *Ball*, *supra* at 289. The Court there held:

[T]he express terms of the lease contemplated that a lessee would keep a vehicle for a period of approximately two years. Indeed, in the instant case, [the driver] had possession of the vehicle in question for six months before the accident in which plaintiff was injured. Plaintiff presented no evidence to counter the clear evidence that the lease at issue was “for a period of more than thirty days.” [*Id.*]

Similarly here, the express terms of the lease contemplated that the lessee would keep the vehicle for an initial term of forty-eight months. We are not prepared to find that any circumstance, however unusual or extenuating, which permits a lease to be prematurely terminated transforms such lease into one which is effectively terminable at will. The lease here was signed on December 22, 1992, and the accident occurred on January 14, 1995; thus, the lessee had possession of the vehicle for well over two years before the accident in which plaintiff Kevin LeBlanc was injured.

Moreover, plaintiffs rely on a theory similar to the *Ball* plaintiff in arguing that defendant could have unilaterally terminated the lease and it was therefore terminable at will and not for a period greater than thirty days. Because the defendant in *Ball* could at any time have unilaterally amended the lease provisions pursuant to the lease, *Ball, supra* at 289, and, according to plaintiffs, defendant could have terminated the lease after the plaintiff failed to secure certain insurance,<sup>2</sup> the defendant here was in the same position as the defendant in *Ball* with respect to the degree of control and the rights that it retained under the lease terms. Notwithstanding the residual rights of the defendant, the *Ball* Court, focusing on the lease period contemplated by the parties as evidenced by the lease terms, concluded that the defendant there was not an “owner” under the act. *Id.* Because the terms of the lease here contemplated a forty-eight month term, the same result applies. The trial court did not err in finding that defendant was not an “owner” under the act.

Plaintiffs argue that *Ball* is distinguishable from the instant case because the Court there stated that “Plaintiff presented no evidence to counter the clear evidence that the lease at issue was ‘for a period of more than thirty days,’” *Ball, supra* at 289, whereas here the lease terms provided that defendant could declare the lease in default should the lessee not obtain sufficient insurance. In context, it is clear that the *Ball* Court was holding that the evidence *presented* was simply not sufficient to show that the lease was, as argued, for less than thirty days. Plaintiffs’ argument that *Ball* is distinguishable on this basis therefore fails.

Plaintiffs also argue that based on *Hill v General Motors Acceptance Corp*, 207 Mich App 504; 525 NW2d 905 (1994), this Court should infer a month-to-month lease based on the written lease agreement. In *Hill*, this Court inferred a month-to-month term, terminable at will by either party on one month’s notice because the lessee paid the lessor on a monthly basis for the vehicle. *Id.* at 515, citing *Swart v Western Union Telegraph Co*, 142 Mich 21, 23; 105 NW 74 (1905). However, in *Hill, supra* at 513-15, there was no written lease governing the lease of the vehicle in question. *Id.* Because a written lease agreement existed here and was in effect, *Hill* is inapposite.

Plaintiffs finally argue that because the act only exempts owner-lessors from common law liability, and because they are alleging negligence of the driver on the basis of a statutory violation, even if the trial court properly found that defendant was not an owner under the act, this finding did not preclude defendant’s statutory liability. However, the language of MCL 257.401(1); MSA 9.2101(1), is clear and unambiguous, as is the definition of “owner” in MCL 257.401a; MSA 9.2101(1). Plaintiffs do not argue otherwise, but focus only on the lessor exemption from common law liability contained in MCL 257.401(2); MSA 9.2101(2). While the section of the act that plaintiffs cite does not limit statutory liability of qualified lessors, the section must be read in conjunction with other portions of the act which only subject “owners” to statutory and common law liability. *State Treasurer v Schuster*,

456 Mich 408, 417; 572 NW2d 628 (1998); see MCL 257.401(1); MSA 9.2101(1); MCL 257.401a; MSA 9.2101(1). Accordingly, regardless of whether plaintiffs' suit is based on a common law or statutory theory of negligence, because defendant is not an "owner" under the act, it is not liable on either theory under the act.

Affirmed.

/s/ William C. Whitbeck

/s/ Stephen J. Markman

/s/ Peter D. O'Connell

<sup>1</sup> MCL 257.401a; MSA 9.2101 provides:

As used in this chapter, "owner" does not include a person engaged in the business of leasing motor vehicles who is the lessor of a motor vehicle pursuant to a lease providing for the use of the motor vehicle by the lessee for a period that is greater than 30 days.

MCL 257.401(2); MSA 9.2101(2) provides:

A person engaged in the business of leasing motor vehicles who is the lessor of a motor vehicle under a lease providing for the use of the motor vehicle by the lessee for a period that is greater than 30 days is not liable at common law for damages for injuries to either person or property resulting from the operation of the leased motor vehicle.

<sup>2</sup> Plaintiffs claim that the lease was in default, and therefore terminable, due to defendant's failure to enforce the insurance requirement on the vehicle because section 10(6) of the lease allegedly provides "and the lessor's failure to enforce any provisions of this lease shall be construed as a waiver thereof or as excusing or releasing lessee from future performance of all of the terms and provisions thereof." Plaintiffs argue that because defendant failed to enforce the insurance provision, the lease was waived and a month-to-month term should apply. However, plaintiffs were made aware at the hearing on the summary disposition motion that they had incorrectly quoted the provision, omitting the word "not." The lease in fact states that "the lessor's failure to enforce any provisions . . . shall *not* be construed. . . ." (emphasis added). Further, it is arguable whether the lessee had even violated the insurance provision given the attached "Lessee's insurance undertaking" that listed the agreed upon insurance coverage as \$1 million.